RECORD AND BRIEFS

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In the Supreme Court of the United States

CARL J. MARINELLO II, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether a conviction under 26 U.S.C. 7212(a) for corruptly endeavoring to obstruct or impede the due administration of the tax code requires proof that the defendant acted with knowledge of a pending Internal Revenue Service investigation or other proceeding.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-39a) is reported at 839 F.3d 209.

JURISDICTION

The judgment of the court of appeals was entered on October 14, 2016. A petition for rehearing was denied on February 15, 2017 (Pet. App. 40a-50a). The petition for a writ of certiorari was filed on March 21, 2017. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions are reprinted in an appendix to this brief. App., *infra*, 1a-4a.

STATEMENT

Following a jury trial in the United States District Court for the Western District of New York, petitioner was convicted on one count of corruptly endeavoring to obstruct or impede the due administration of the Internal Revenue Code, in violation of 26 U.S.C. 7212(a); and eight counts of willfully failing to file tax returns, in violation of 26 U.S.C. 7203. The district court sentenced petitioner to 36 months of imprisonment, to be followed by one year of supervised release. The court of appeals affirmed. Pet. App. 1a-39a.

1. Petitioner owned and managed Express Courier Group/Buffalo, Inc. (Express Courier), a New York corporation that operated a freight service between the United States and Canada. Pet. App. 3a. For over a decade, petitioner failed to file corporate and personal income tax returns. *Id.* at 4a. Petitioner paid his employees in cash and did not issue them or himself the documents necessary to report their income to the Internal Revenue Service (IRS). *Id.* at 3a-4a. He systematically destroyed most of Express Courier's records, including bank account statements, employee work statements, receipts, bills, and other documents necessary to calculate his business income and file tax returns. *Id.* at 3a. Petitioner also routinely diverted corporate funds for his personal use, including by paying his mortgage and his mother's living expenses from business accounts and by having the company make weekly cash "contributions" to his wife. *Id.* at 4a.

In 2004, the IRS received an anonymous letter alleging that petitioner was engaged in an unlawful scheme to avoid paying taxes. Pet. App. 4a. The letter stated, among other things, that petitioner repeatedly issued business checks "to two fictitious individuals totaling

$3000 to $5000 weekly," which he would then endorse using the fictitious payee's name and cash at a bank where he "knew" the teller. Gov't Ex. 3.05, at 2; see Trial Tr. 143. The letter further alleged that all of petitioner's expenses, "business and personal," were "paid out of the business account." *Ibid.*

Based on that tip, the IRS launched a preliminary investigation into petitioner's tax reporting. Pet. App. 4a. The investigation revealed that petitioner had apparently never filed a tax return. Gov't Ex. 16.01, at 2; see Trial Tr. 151. The IRS concluded that, although "at least some unreported income" was likely, it could not determine from the information then available whether the amount was significant or whether other allegations in the anonymous letter were true. Gov't Ex. 16.01, at 2; see Trial Tr. 149-150. Petitioner had no knowledge of that investigation. Pet. App. 4a.

In 2005, petitioner admitted to his attorney that he had not filed tax returns for several years. Pet. App. 4a. The attorney told petitioner that failing to file tax returns was improper and referred him to a certified public accountant, Allan Wiegley. *Ibid.* Wiegley, too, told petitioner that he needed to file both personal and corporate tax returns and pay taxes, and that he "ha[d] to get caught up" on any past failures to file. Trial Tr. 328-330; see Pet. App. 4a. Wiegley also explicitly warned petitioner not to destroy Express Courier's business records. Trial Tr. 330, 346.

Wiegley instructed petitioner to give him Express Courier's records, including "records of business receipts and expenses," so that Wiegley could prepare a tax return and submit the necessary information to the IRS. Pet. App. 4a; see Trial Tr. 328. Petitioner, who had destroyed the records, never did so. Pet. App. 4a.

Wiegley informed petitioner that the lack of documents made it impossible to calculate petitioner's income or to prepare a tax return, and he therefore refused to "be [petitioner's] accountant." Trial Tr. 330-331. Petitioner then resumed his practice of systematically destroying his business records and not filing tax returns. Pet. App. 5a; see Trial Tr. 192-194. He also continued to divert Express Courier's income to personal bank accounts, to use corporate funds to pay his personal expenses, and to pay his employees in cash without any recordkeeping or reporting to the IRS. See Trial Tr. 174-176, 181-188, 223-224, 400-409.

In 2009, the IRS reopened its investigation of petitioner. Pet. App. 5a. During an interview with an IRS special agent at petitioner's home, petitioner stated that he could "not remember the last time he filed an income tax return." Trial Tr. 170; see Pet. App. 5a. Petitioner initially told the agent that he did not file personal or corporate tax returns because he and Express Courier made less than $1000 per year, Pet. App. 5a, but that was false: in each year between 2005 and 2008, for example, Express Courier took in hundreds of thousands of dollars in gross receipts and petitioner diverted tens of thousands of dollars from the corporation's coffers to pay his personal expenses. *Ibid.*

Petitioner eventually admitted to the IRS agent that he knew he was supposed to file tax returns and pay taxes but that he "never got around to it." Trial Tr. 172; see Pet. App. 5a. Petitioner also acknowledged that he took money from Express Courier to pay his personal expenses and that he had systematically destroyed Express Courier's records over the course of several years. Pet. App. 5a. Petitioner told the agent that he destroyed the records because it was "the easy way out"

and was "what [he had] been doing all along." Trial Tr. 194; see Pet. App. 6a.

2. A federal grand jury charged petitioner with one count of corruptly endeavoring to obstruct and impede the due administration of the Internal Revenue Code, in violation of 26 U.S.C. 7212(a) (Count 1); and eight counts of willfully failing to file individual and corporate tax returns, in violation of 26 U.S.C. 7203 (Counts 2 through 9). Superseding Indictment 1-10.

Count 1 alleged a violation of the "omnibus clause" of Section 7212, which makes it a crime to "corruptly * * * endeavor[] to obstruct or impede, the due administration" of the Internal Revenue Code. 26 U.S.C. 7212(a). The grand jury alleged that petitioner violated that provision by, "among other thing[s]":

(1) "failing to maintain corporate books and records" for Express Courier;

(2) "failing to provide [petitioner's] accountant with complete and accurate information" about petitioner's personal income and Express Courier's business income;

(3) "destroying, shredding and discarding business records of Express Courier";

(4) "cashing business checks received by Express Courier";

(5) "hiding income earned by Express Courier in personal and other non-business bank accounts";

(6) "transferring [Express Courier's] assets to a nominee" (*i.e.*, his wife);

(7) "paying employees of Express Courier with cash"; and

(8) using money from Express Courier's business accounts "to pay personal expenses."

Superseding Indictment 1-2; see Pet. App. 6a-7a.

At trial, petitioner conceded that he did all of those things, but disputed whether he did so with criminal intent. Pet. App. 32a n.14 (citing Trial Tr. 51-56). The district court instructed the jury that, to convict petitioner on Count 1, it needed to find unanimously and beyond a reasonable doubt that he "acted corruptly," meaning that he "act[ed] with the intent to secure an unlawful advantage or benefit, either for [him]self or for another," and that he did so "with the intent to impede or obstruct the due administration of the Internal Revenue laws." Trial Tr. 470. The court also instructed the jury that it needed to find that petitioner engaged in an obstructive "endeavor," meaning that he "knowingly and intentionally act[ed], or knowingly and intentionally ma[de] any effort which ha[d] a reasonable tendency to bring about the desired result." *Ibid.* With respect to the various means of the corrupt endeavor charged in Count 1, the district court instructed the jury (over petitioner's objection) that it was required to find unanimously "that at least one" of the means was proved but that it "need not agree that the same one has been proved." *Id.* at 471; see Pet. App. 9a. Petitioner was convicted on all counts. Pet. App. 10a.

3. Petitioner filed a post-verdict motion for a judgment of acquittal or a new trial. See D. Ct. Doc. 92 (Sept. 9, 2014). In that motion, petitioner admitted that the government proved several of the means of the corrupt endeavor charged in Count 1, including that he systematically destroyed records and other documents, diverted corporate funds for his personal use, transferred corporate assets to his wife, paid his employees in cash,

and failed to maintain corporate tax records. *Id.* at 4; see Pet. App. 56a.

Nonetheless, petitioner argued, for the first time, that a conviction under the omnibus clause of Section 7212(a) requires proof that "the defendant knew he was under investigation by the IRS and intended to corruptly interfere with that investigation." D. Ct. Doc. 92, at 8. Because the government's evidence at trial established that petitioner endeavored to obstruct the IRS's ability to ascertain his income and to calculate, assess, and collect the taxes he owed, but did not show that petitioner endeavored to obstruct the IRS's criminal investigation after he learned about it, petitioner contended that the government failed to prove an offense under Section 7212(a). *Id.* at 10.

The district court denied petitioner's motion. Pet. App. 51a-57a. The court noted that the omnibus clause of Section 7212(a) applies to corrupt endeavors "to impede or obstruct the due administration of the Internal Revenue laws," and not just known IRS investigations. *Id.* at 56a; see *ibid.* ("Knowledge of a pending investigation is not an essential element of the crime."). The court acknowledged that the Sixth Circuit reached a contrary result in *United States* v. *Kassouf*, 144 F.3d 952 (1998), but concluded that *Kassouf*'s interpretation had been "rejected by other circuits" and was unpersuasive. Pet. App. 56a.

4. At sentencing, the district court adopted the Probation Office's determination that, from 2005 to 2008, petitioner failed to report gross business income totaling over $2.3 million, resulting in an estimated tax loss to the government of over $598,000. Sent. Tr. 9; see

Presentence Investigation Report ¶¶ 27-32, 35.[1] In defending that tax-loss calculation, the government noted that petitioner's systematic destruction of his business records made it impossible to determine the actual amounts of income or loss, and that the resulting inability to prove a specific tax deficiency was the reason why the government declined to press a more serious charge of tax evasion under 26 U.S.C. 7201. D. Ct. Doc. 107, at 10 (Feb. 26, 2015) (noting that the decision to charge petitioner with obstruction instead of tax evasion "was directly related to the fact that [petitioner] regularly destroyed, discarded and/or failed to maintain business records"); *id.* at 11 (noting that, as a result of petitioner's concealment of business assets in personal accounts, most "bank expenditures could not readily be classified as either personal or business expenses" and that petitioner "destroyed any books or records that would clarify the issue").

After considering the advisory sentencing range under the Sentencing Guidelines and other relevant factors, the district court sentenced petitioner to 36 months of imprisonment on the obstruction count and concurrent 12-month sentences on the failure-to-file counts. Sent. Tr. 12-14, 29. The court noted that petitioner clearly knew "that he had the obligation" to preserve business records, report income, and pay taxes, and that he deliberately refused to do so as part of a "defiant stand" "to thwart the efforts of the government to collect taxes." *Id.* at 14, 28-29.

5. The court of appeals affirmed. Pet. App. 1a-39a. As relevant here, petitioner renewed his argument that

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[1] Those estimates were based on payment records the government obtained from some of Express Courier's clients. See, *e.g.*, Trial Tr. 387-400.

a conviction under the omnibus clause of Section 7212(a) requires proof that the defendant acted with knowledge of a pending IRS investigation. Pet. C.A. Br. 23-25.

The court of appeals rejected petitioner's argument and affirmed his convictions. Pet. App. 17a-30a. The court noted that, apart from the Sixth Circuit's decision in *Kassouf*, every court of appeals to have considered the question had held that Section 7212(a)'s omnibus clause "criminalizes corrupt interference with an official effort to administer the tax code, and not merely a known IRS investigation." *Id.* at 28a; see, *e.g.*, *United States* v. *Westbrooks*, 858 F.3d 317, 322-324 (5th Cir. 2017), petition for cert. pending, No. 17-5112 (filed July 6, 2017); *United States* v. *Sorensen*, 801 F.3d 1217, 1231-1233 (10th Cir. 2015), cert. denied, 136 S. Ct. 1163 (2016); *United States* v. *Floyd*, 740 F.3d 22, 32 & n.4 (1st Cir.), cert. denied, 135 S. Ct. 124 (2014); *United States* v. *Scheuneman*, 712 F.3d 372, 380 (7th Cir. 2013); *United States* v. *Massey*, 419 F.3d 1008, 1010 (9th Cir. 2005), cert. denied, 547 U.S. 1132 (2006). As the court explained, Section 7212(a) "prohibits any effort to obstruct the administration of *the tax code*, not merely of investigations and proceedings conducted by the tax authorities," and because "the IRS does duly administer the tax laws even before initiating a proceeding," a defendant need not be "aware[] of a particular [IRS] action or investigation" at the time he corruptly engages in acts of obstruction. Pet. App. 25a-26a (citations omitted; second brackets in original).

6. Petitioner sought rehearing en banc, which the court of appeals denied. Pet. App. 41a. Judge Jacobs dissented from the denial of rehearing en banc, arguing that *Kassouf*'s interpretation of Section 7212(a) was correct. *Id.* at 41a-50a.

SUMMARY OF ARGUMENT

The "omnibus clause" of Section 7212(a) of Title 26 makes it a crime to corruptly endeavor to obstruct or impede "the due administration" of the Internal Revenue Code. The due administration of the Code includes the IRS's determination of a taxpayer's income and its calculation, assessment, and collection of her taxes. Contrary to petitioner's interpretation—which limits the phrase "due administration" of the Code to specific types of known, pending proceedings—an individual can violate Section 7212(a) by taking corrupt action that is intended and likely to obstruct anticipated IRS administrative action to calculate, assess, and collect taxes.

I. A. The ordinary meaning of the phrase "due administration of this title" in Section 7212(a) encompasses the full range of the IRS's powers in administering the Internal Revenue Code. Those powers include gathering information that taxpayers are required to report to the IRS; using that information to ascertain income; calculating, assessing, and collecting any taxes that may be due; and conducting audits, investigations, and similar proceedings to enforce the tax code against potential violators. A defendant who, with the requisite *mens rea*, endeavors to obstruct the IRS's ability to discharge those administrative functions commits a crime under Section 7212(a).

B. Section 7212(a) requires either actual obstruction or an "endeavor" to obstruct administration of the tax code. An endeavor must involve conduct that is likely to result in obstruction of the due administration of the code. But a particular IRS action need not be pending, nor must the defendant *know* of a pending action, in order to anticipate one and seek to obstruct it.

The administration of the tax code occurs on a regular, predictable schedule, and every taxpayer can foresee the likely effect of deliberately obstructive acts.

C. A defendant's endeavor does not violate Section 7212(a) unless he acts "corruptly" and intends to obstruct the due administration of the tax code. Those *mens rea* requirements ensure that a defendant is aware that his obstructive acts are directed at the IRS's administration of the tax code, that he intends to obstruct those functions, and that he does so with the specific intent of obtaining a benefit or advantage that he knows to be illegal. The *mens rea* elements of Section 7212(a) readily distinguish purposeful tax violators from those who lack a culpable intent to obstruct and ensure that the provision is not a trap for the unwary.

D. This interpretation furthers Section 7212(a)'s purpose to protect the integrity of our voluntary tax reporting system. The income tax system depends upon taxpayers voluntarily complying with their responsibilities and self-reporting their income in good faith. Petitioner's interpretation of the statute would effectively foreclose most obstruction prosecutions involving schemes to obstruct the IRS's initial calculation and assessment activities. It would also reward those, like petitioner, who so thoroughly obstruct the calculation, assessment, and collection phases of tax administration that other crimes cannot later be proved.

II. A. Petitioner draws an analogy to 18 U.S.C. 1503(a), which proscribes corrupt endeavors to obstruct or impede "the due administration of justice" and requires proof of a known, pending judicial proceeding. Section 1503(a)'s pending-proceeding requirement stems from that statute's reference to "justice," not the

"due administration" language that also appears in Section 7212(a). Moreover, Section 1503(a) is merely a recodified version of an earlier obstruction statute that was explicitly limited to the due administration of justice *in a court*. Section 7212(a) has no similar lineage.

B. Petitioner's reliance on principles of statutory construction is misplaced. *Noscitur a sociis* does not support petitioner's interpretation because the first clause of Section 7212(a) covers acts that intimidate or impede IRS employees in the exercise of their duties, without limitation to a known, pending investigation or other proceeding. And *noscitur a sociis* does not apply to statutes, like this one, that define two offenses in separate clauses, even if one is broader than the other. Petitioner further argues that the government's interpretation of the omnibus clause would render the first clause superfluous. The breadth of the omnibus clause, however, is evident from the statutory language and is common in a scheme such as this.

C. The legislative history of Section 7212(a) provides no support for petitioner's interpretation of the statute. The sparse history of that provision focuses almost exclusively on Section 7212(a)'s first clause and does not purport to interpret the omnibus provision.

D. The rule of lenity has no application. The meaning of Section 7212(a)'s omnibus clause is clear. At the very least, the clause does not contain the sort of grievous ambiguity that would give rise to lenity concerns.

III. A. Petitioner's policy arguments are likewise unpersuasive. He contends that the government's interpretation of Section 7212(a)'s omnibus clause would impermissibly overlap with other criminal provisions. This Court has repeatedly held, however, that overlap in the scope or elements of criminal statutes is

permissible, particularly among the various felonies and misdemeanors defined in the Internal Revenue Code. And in any event, the elements of Section 7212(a) differ from those in other criminal tax provisions.

B. Petitioner also contends that the government's interpretation of the omnibus clause would unfairly chill lawful conduct. Neither he nor his supporting *amici* identify any lawful conduct that has been or would likely be chilled by a plain-meaning application of Section 7212(a). The statute's *mens rea* requirements provide ample protection to those who make mistaken judgments about what the tax code allows, and such concerns would not justify an atextual reading of the statute in any event.

ARGUMENT

AN ENDEAVOR TO OBSTRUCT THE DUE ADMINISTRATION OF THE INTERNAL REVENUE CODE, IN VIOLATION OF 26 U.S.C. 7212(a), DOES NOT REQUIRE PROOF OF A PENDING PROCEEDING

The omnibus clause of 26 U.S.C. 7212(a) provides that "[w]hoever * * * corruptly or by force or threats of force * * * obstructs or impedes, or endeavors to obstruct or impede, the due administration of this title," has committed a crime punishable (in most cases) by up to three years of imprisonment. *Ibid.* A person violates that statute by endeavoring, with the requisite *mens rea*, to obstruct or impede the IRS's ability to administer the Internal Revenue Code, including by interfering with the IRS's efforts to ascertain income and to calculate, assess, and collect taxes that are lawfully due to the United States. Nothing in the statute's text, structure, or history limits it to obstruction of a specific, pending IRS proceeding, "such as an audit or investigation," of which the defendant is aware. Pet. Br. 15.

I. THE OMNIBUS CLAUSE OF SECTION 7212(a) APPLIES TO ALL CORRUPT ENDEAVORS TO OBSTRUCT THE ADMINISTRATION OF THE TAX CODE

A. The "Due Administration" Of Title 26 Includes The IRS's Responsibilities To Ascertain Income And To Calculate, Assess, And Collect Federal Taxes

When interpreting a statute, this Court looks first to the statutory language, "giving the words used their ordinary meaning." *Lawson* v. *FMR LLC*, 134 S. Ct. 1158, 1165 (2014) (citation omitted). If the statutory language is plain and unambiguous, the Court's "analysis begins and ends with the text." *Octane Fitness, LLC* v. *ICON Health & Fitness, Inc.*, 134 S. Ct. 1749, 1755 (2014). Here, the meaning of the phrase "due administration of this title" is controlled by the ordinary sense of those words and the statutory scope of the IRS's duties.

1. As the court of appeals observed, the omnibus clause of Section 7212(a) "does not contain any * * * reference to IRS actions, investigations, or proceedings." Pet. App. 24a. Instead, it reaches corrupt endeavors to obstruct or impede the "due administration" of the Internal Revenue Code. 26 U.S.C. 7212(a). The ordinary meaning of that term is the same today as it was when the statute was enacted. "Due" means "rightful, proper, or just." *Webster's New International Dictionary of the English Language* 796 (2d ed. 1947) (*Webster's*); see *Black's Law Dictionary* 589 (4th ed. 1951) (*Black's*) ("[j]ust; proper; regular; lawful"). "Administration" means the "[a]ct or process of administering," including "[t]he managing or conduct of an office or employment; the performance of the executive duties of an institution, business, or the like." *Webster's* 34; see *Black's* 65 ("practical management and direction of the executive department, or of the public machinery or

functions"); accord *Lopez* v. *Monterey Cnty.*, 525 U.S. 266, 278 (1999) (noting that the statutory term "administer" has been "consistently defined" to mean "manage the affairs of" and "have executive charge of") (citations omitted).

A straightforward reading of the phrase "due administration of this title" in Section 7212(a) thus encompasses the IRS's lawful exercise of its powers in carrying out its statutory mandate under the Internal Revenue Code. See *United States* v. *Cleveland Indians Baseball Co.*, 532 U.S. 200, 218-219 (2001) (noting that "the administration of the tax laws" is vested in the IRS and includes the application of IRS rules and regulations that "implement the [agency's] congressional mandate in some reasonable manner") (quoting *United States* v. *Correll*, 389 U.S. 299, 306-307 (1967)).

2. Congress gave the IRS a range of administrative responsibilities that are defined by law. They include not only the types of actions to which petitioner would confine Section 7212(a)—formal proceedings "such as an audit or investigation," Pet. Br. 15—but also the determination of income and the calculation, assessment, and collection of taxes based on taxpayer self-reporting.

a. The IRS's administrative duties and the requirements imposed on taxpayers to assist the agency in carrying out those duties are set forth in Subtitle F of the Internal Revenue Code, entitled "Procedure and Administration."[2] Each of these steps is "essential to efficient and fair administration of the tax laws." *Bob Jones Univ.* v. *United States*, 461 U.S. 574, 596 (1983). Before the IRS begins its administrative process, the

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[2] The title of Subtitle F was adopted by Congress in the Internal Revenue Code of 1954. See ch. 736, Subtit. F, 68A Stat. 731.

Code requires taxpayers to file returns and to self-report information to the IRS to ensure that the agency receives accurate information concerning income and potential tax liability. See 26 U.S.C. 6001 *et seq.*; cf. *Direct Mktg. Ass'n* v. *Brohl*, 135 S. Ct. 1124, 1129-1130 (2015) (noting that "the Federal Tax Code has long treated information gathering as a phase of tax administration procedure"). Based on that information, the IRS calculates and assesses the amount of taxes that may be owed. See 26 U.S.C. 6201 *et seq.*; cf. *Brohl*, 135 S. Ct. at 1130 (noting that "[a]ssessment" is another "step in the process" of tax administration, involving the calculation and recording of a taxpayer's liability "after information relevant to the calculation of that liability is reported to the taxing authority"). The IRS also administers the Code by collecting taxes that are due. 26 U.S.C. 6301 *et seq.*; cf. *Brohl*, 135 S. Ct. at 1131 (explaining that "'collection' is a separate step in the taxation process from assessment and the reporting on which assessment is based").

In addition to those functions, the IRS conducts audits and investigations to ensure compliance with the tax laws. See 26 U.S.C. 7601 *et seq.*; cf. *United States* v. *Bisceglia*, 420 U.S. 141, 145 (1975) (noting the IRS's "broad mandate to investigate and audit persons who may be liable for taxes") (internal quotation marks and emphasis omitted). But the "due administration" of the tax code that Section 7212(a) protects begins before those possible actions.

b. The Internal Revenue Code and this Court's cases thus reflect a uniform understanding of what the "due administration" of the tax laws includes—an understanding that comports with the ordinary meaning of those words. Audits and investigations are examples

of "due administration," but they are not the only functions that come within that provision. Petitioner's more restrictive definition has no basis in the statutory text.

B. An "Endeavor" Requires A Factual Nexus Between The Defendant's Obstructive Acts And Tax Administration, But It Does Not Require That Specific Administrative Actions Be Pending

Section 7212(a)'s omnibus clause applies to both completed acts of obstruction and "endeavors" to obstruct. 26 U.S.C. 7212(a). To be convicted of an "endeavor," as petitioner was, the government must prove that the defendant acted "in a manner that is likely to obstruct," even though he may have been "foiled in some way." *United States* v. *Aguilar*, 515 U.S. 593, 601-602 (1995) (construing 18 U.S.C. 1503(a)); see *United States* v. *Russell*, 255 U.S. 138, 143 (1921) (defining an "endeavor" as an "effort or essay to accomplish the evil purpose that the section was enacted to prevent"); cf. Trial Tr. 470 (instructing jury that an "endeavor" requires proof of a knowing and intentional act or effort "which has a reasonable tendency to bring about the desired result" of obstructing the tax code).

Section 7212(a) thus requires either actual obstruction or an effort to obstruct that has "the natural and probable effect of interfering with the due administration" of the Internal Revenue Code. *Aguilar*, 515 U.S. at 599 (citation omitted). It therefore ensures an objective factual "nexus" between the defendant's conduct and the IRS's administrative acts. *Ibid.*

This does not mean, however, that those administrative acts must be pending at the time the defendant engages in obstructive conduct. Unlike the judicial or grand jury proceedings at issue in *Aguilar*, which arise only when triggered by specific action, many of the

IRS's administrative actions occur regularly, on a predictable schedule, and apply broadly to all taxpayers. The basic obligation to file an income tax return is an annual ritual, required by law. Individuals therefore readily anticipate administrative action by the IRS every year during tax season. No plausible claim could be made that an endeavor to obstruct the IRS's ability to identify income and calculate, assess, and collect taxes would not have a likely effect on the administration of the Code simply because the individual engaged in that conduct before Tax Day.

Indeed, obstructing those forms of administration often *requires* action before the IRS's administrative process focuses on the specific taxpayer. An obstructive endeavor like petitioner's—involving the destruction of records, concealment of income, and structuring of corporate affairs to avoid complying with legal duties—would be likely to succeed only if it occurred before the start of the administrative process that commences once the taxpayer reports his income. Efforts to obstruct the IRS's calculation and assessment of taxes after that process begins would in most cases be futile because, at that point, the IRS will have already collected the information necessary to carry out those administrative functions. A "known proceeding" requirement (Pet. Br. 39) would thus frustrate the protection Section 7212(a) is designed to afford to critical IRS administrative actions.

C. Section 7212(a)'s *Mens Rea* Requirements Limit The Statute's Reach

1. Although Section 7212(a) applies to all phases of the IRS's administration of the tax laws, absent force or the threat of force, a tax-obstruction offense does not exist unless the defendant acts "corruptly." 26 U.S.C.

7212(a). Consistent with the "special treatment" generally afforded to *mens rea* requirements in criminal tax statutes, *Cheek* v. *United States*, 498 U.S. 192, 200 (1991), the courts of appeals have uniformly interpreted the "corruptly" element in Section 7212(a) to require proof that the defendant "act[ed] with an intent to procure an unlawful benefit either for [himself] or for some other person." *United States* v. *Floyd*, 740 F.3d 22, 31 (1st Cir.) (citing cases from nine other circuits), cert. denied, 135 S. Ct. 124 (2014); see Trial Tr. 470 (same); 3 Leonard B. Sand et al., *Modern Federal Jury Instructions—Criminal* ¶ 59-33 (2017) (same).

The specific intent to obtain an unlawful benefit or advantage subsumes two concepts. First, it requires that the defendant knows that his obstructive conduct is "directed at efforts to bring about a particular advantage such as impeding the collection of one's taxes, the taxes of another, or the auditing of one's or another's tax records." *United States* v. *Reeves*, 752 F.2d 995, 998 (5th Cir.), cert. denied, 474 U.S. 834 (1985). Second, it requires that the defendant be aware that the advantage is contrary to law. See *Floyd*, 740 F.3d at 31 ("unlawful benefit").

The meaning of "corruptly" in Section 7212(a) is, in these respects, more specific and demanding than the meaning of that term as applied in other, more general obstruction statutes. For example, Congress has defined the term "corruptly" in 18 U.S.C. 1505 (prohibiting corrupt endeavors to obstruct agency proceedings) to mean "acting with an improper purpose, personally or by influencing another, including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information." 18 U.S.C. 1515(b). This Court has defined the term

"corruptly" in 18 U.S.C. 1512(b) (prohibiting the corrupt persuasion of another person to withhold information from an "official proceeding") as "wrongful, immoral, depraved, or evil." *Arthur Andersen LLP* v. *United States*, 544 U.S. 696, 705 (2005). And in the context of the general obstruction-of-justice statute, 18 U.S.C. 1503, courts have defined the term "corruptly" to mean "knowingly and dishonestly," *United States*, v. *Richardson*, 676 F.3d 491, 508 (5th Cir. 2012) (citation omitted); "with an improper or evil motive," *United States* v. *Frank*, 354 F.3d 910, 922 (8th Cir. 2004); or, simply, "with the purpose of obstructing justice," *United States* v. *Cueto*, 151 F.3d 620, 630 (7th Cir. 1998) (citation omitted), cert. denied, 526 U.S. 1016 (1999).

The federal courts' uniform adoption of a more specific and rigorous definition of "corruptly" in Section 7212(a), accords with this Court's interpretation of other *mens rea* requirements in the criminal tax context. In *Cheek*, for example, the Court held that in the context of tax offenses, "willfully" requires proof "that the law imposed a duty on the defendant, that the defendant knew of this duty, and that he voluntarily and intentionally violated that duty." 498 U.S. at 201. That enhanced mental state requirement reflects this Court's recognition that "the complexity of the tax laws" may make it "difficult for the average citizen to know and comprehend the extent of the[ir] duties and obligations" under those laws, and thus *mens rea* requirements in criminal tax statutes should be interpreted more stringently than in other contexts. *Id.* at 199-200. A similar approach informs the interpretation of "corruptly" under Section 7212(a).

2. Section 7212(a) also requires proof that the defendant acted "with the intent to impede or obstruct the due administration of the Internal Revenue laws." Trial Tr. 470; see 3 Sand ¶¶ 59-32, 59-34 (identifying obstructive intent and acting "corruptly" as separate elements of Section 7212(a)'s omnibus clause). That intent requirement comports with the general principle that, in the obstruction context, Congress is presumed to have "intended criminal liability to be imposed only when a person acted with the specific intent to impede" the government function at issue. *United States* v. *Feola*, 420 U.S. 671, 678 (1975). It is also consistent with the principle that an inchoate offense (such as an endeavor) requires intent to commit the substantive offense. *Id.* at 694; see *Aguilar*, 515 U.S. at 601 (holding that an "endeavor" to obstruct justice requires proof that the defendant "act[ed] with an intent to obstruct justice").

3. The *mens rea* requirements of Section 7212(a) serve the critical function of ensuring that only those who understand the character and import of their actions are punished. A defendant does not violate the statute unless, at minimum, he intentionally endeavors to obstruct the due administration of the tax code with the specific intent to obtain an unlawful benefit or advantage as a result. Those requirements "separate the purposeful tax violator from the well-meaning, but easily confused, mass of taxpayers." *United States* v. *Bishop*, 412 U.S. 346, 361 (1973).

D. The Purpose Of Section 7212(a)'s Omnibus Clause Supports Its Application To Obstructive Acts That Occur Outside The Context Of A Known, Pending Proceeding

The Court "interpret[s] the relevant words [of Section 7212(a)] not in a vacuum, but with reference to the statutory context, 'structure, history, and purpose.'"

Abramski v. *United States*, 134 S. Ct. 2259, 2267 (2014) (citation omitted). Here, the structure of the tax laws and the purpose of Section 7212(a) reinforce the conclusion that the statute applies to obstructive acts aimed at anticipated administration of the tax laws.

1. As this Court has observed, "our tax structure is based on a system of self-reporting," requiring the government to "depend[] upon the good faith and integrity of each potential taxpayer to disclose honestly all information relevant to tax liability." *Bisceglia*, 420 U.S. at 145. That system "can function successfully only if those within and near taxable income keep and render true accounts." *Spies* v. *United States*, 317 U.S. 492, 495 (1943). Taxpayers "may prejudice the orderly and punctual administration of the system as well as the revenues themselves" in "many ways," *ibid.*, and it is therefore "necessary to have in place a comprehensive statute in order to prevent taxpayers and their helpers from gaining unlawful benefits by employing that variety of corrupt methods that is limited only by the imagination of the criminally inclined," *United States* v. *Popkin*, 943 F.2d 1535, 1540 (11th Cir. 1991) (citation and internal quotation marks omitted), cert. denied, 503 U.S. 1004 (1992).

2. The critical role of Section 7212(a)'s omnibus clause supports its application to obstructive acts before the IRS has commenced an investigation or other proceeding. Applying the omnibus clause to endeavors to obstruct the "due administration" of the tax code in all its forms, 26 U.S.C. 7212(a), and not just pending IRS audits or investigations, reflects the reality of how the IRS administers the code. Obstructing the IRS's ability to ascertain income and to calculate, assess, and collect taxes undermines the tax system as a whole, including any investigations or other proceedings that might later be brought in

an effort to enforce the law against violators. Indeed, such investigations or other proceedings might be futile if earlier obstructive acts go unpunished.

Large-scale tax-evasion schemes, for example, often involve complicated endeavors to obstruct tax administration by many different means, including some that are explicitly designed to prevent IRS assessment and collection actions from triggering audits and investigations. See *United States* v. *Crim*, 451 Fed. Appx. 196, 200-201 (3d Cir. 2011) (affirming Section 7212(a) conviction of a defendant who promoted the unlawful use of trusts to hide assets and evade income taxes), cert. denied, 566 U.S. 927, and 132 S. Ct. 2682 (2012); cf. *United States* v. *Sorensen*, 801 F.3d 1217, 1221-1222 (10th Cir. 2015) (describing similar scheme), cert. denied, 136 S. Ct. 1163 (2016). The same design underlies the acts of tax-return preparers who systematically create false documents and file fraudulent returns. See, *e.g.*, *United States* v. *Westbrooks*, 858 F.3d 317, 321 (5th Cir. 2017), petition for cert. pending, No. 17-5112 (filed July 6, 2017); *United States* v. *Madoch*, 108 F.3d 761, 763 (7th Cir. 1997). Because such schemes usually occur before IRS investigations or other proceedings begin—and are often specifically designed to avoid such proceedings—they could not be charged as obstruction under petitioner's interpretation even though the perpetrators manifestly intend to obstruct the administration of the tax code and to reap unlawful benefits as a result, often on a massive scale. See *United States* v. *Mitchell*, 985 F.2d 1275, 1279 (4th Cir. 1993) ("It is just such a creative and multi-faceted scheme to evade taxes that the omnibus clause of § 7212 targets.").

3. Requiring "knowledge" of a pending proceeding would have equal potential to frustrate Section 7212(a)'s purpose to protect the administrative functions of the

IRS. As explained, the IRS administers the tax code with predictable regularity, and every taxpayer is aware that she will be subject to the administration of the code on an annual basis. Section 7212(a)'s *mens rea* requirements ensure that a defendant must intend to obstruct that forthcoming administration in order to be convicted under the statute. If a taxpayer must know that she is under current IRS scrutiny in an investigation or other proceeding, however, even a defendant who is aware of a forthcoming audit or investigation, and who actually obstructs that action with the requisite *mens rea*, has not violated the statute. See, *e.g.*, Order at 35-38, *United States* v. *Ogbazion*, No. 15-cr-104 (S.D. Ohio Aug. 25, 2015) (dismissing charge that owner of tax preparation business violated Section 7212(a) by directing subordinates to falsify client files in anticipation of routine IRS audits because the audits had not yet begun).

4. It is no answer to say (Pet. Br. 51-52) that the government should charge defendants in these circumstances with other offenses. The government need not forgo enforcement of Section 7212(a), under the terms Congress has expressly provided in the statute, simply because alternative offenses may be available. Forcing the government to break up an endeavor into its constituent parts and charge them as standalone offenses would also eliminate the usefulness of the provision in attacking the scheme as a whole and in ensuring appropriate punishment for those who devise an obstructive endeavor that aggregates a variety of lesser offenses and non-criminal acts. And in any event, the very act of obstruction may make it difficult, and perhaps impossible, to establish other offenses.

This case is a good example of those problems. As explained (p. 8, *supra*), petitioner's systematic destruction of documents and shuttling of assets prevented the government from proving beyond a reasonable doubt that he committed tax evasion, in violation of 26 U.S.C. 7201, because it could not establish his specific tax deficiency. See *Sansone* v. *United States*, 380 U.S. 343, 351 (1965) (noting that tax evasion requires the "existence of a tax deficiency"). If Section 7212(a) required proof of a known pending investigation or other proceeding, petitioner's successful efforts to thwart the computation of his income and tax liability could be prosecuted only as a misdemeanor such as failure to file under 26 U.S.C. 7203. And if petitioner's destruction of documents had resulted in an inability to determine even his gross income and resulting obligation to file a return, petitioner may have gone completely unprosecuted.

II. PETITIONER IDENTIFIES NO BASIS IN THE TEXT OR HISTORY OF SECTION 7212(a) FOR REQUIRING OBSTRUCTION OF A KNOWN, PENDING IRS INVESTIGATION OR ENFORCEMENT PROCEEDING

Petitioner identifies nothing in the ordinary meaning of Section 7212(a)'s omnibus clause that would support limiting it to obstruction of a known, pending IRS audit, investigation, or similar proceeding. Instead, he relies on an analogy to the general obstruction-of-justice statute (18 U.S.C. 1503), inapplicable principles of construction, and extracts from legislative history to argue that this Court should infer such an element despite its absence from the statutory text. This Court "ordinarily resist[s] reading words or elements into a statute that do not appear on its face," *Dean* v. *United States*, 556 U.S. 568, 572 (2009) (citation omitted), and petitioner

provides no sufficient reason to depart from that principle here.

A. The Phrase "Due Administration Of This Title" In Section 7212(a) Is Not Equivalent To The Phrase "Due Administration Of Justice" In Section 1503(a)

1. Petitioner contends (Br. 23-28) that the phrase "due administration of this title" in Section 7212(a) is a term of art that should be construed to have the same essential meaning as the phrase "due administration of justice" in 18 U.S.C. 1503(a). That statute applies to any person who "corruptly or by threats or force * * * influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice." *Ibid.* Because Section 1503(a) has been interpreted to require knowledge of a pending judicial proceeding, see *Aguilar*, 515 U.S. at 599, petitioner contends that the phrase "due administration of this title" in Section 7212(a) should be interpreted to require knowledge of a pending agency proceeding.

As the court of appeals explained (Pet. App. 23a-26a), petitioner's analogy to Section 1503(a) is flawed. Sections 1503(a) and 7212(a) refer to different kinds of due administration: "of justice" and "of this title." Although petitioner repeatedly conflates the two, referring to them as simply the "due administration" provisions, *e.g.*, Br. 23, 26, 27, they are not the same. The administration of "justice" presupposes the existence of a pending judicial proceeding because that is how justice is usually administered in the United States: through discrete proceedings involving parties to an actual case or controversy requiring resolution by the courts. See *Black's Law Dictionary* 53 (10th ed. 2014) (defining "due administration of justice" as "[t]he proper functioning and integrity of a court or other tribunal and the

proceedings before it in accordance with the rights guaranteed to the parties").

Because the administration of justice in a court is a discrete event, knowledge of such a proceeding helps ensure that obstructive conduct is accompanied by culpable intent. See *Pettibone* v. *United States*, 148 U.S. 197, 206 (1893) ("[A] person is not sufficiently charged with obstructing or impeding the due administration of justice in a court unless it appears that he knew or had notice that justice was being administered in such court."); see also *Aguilar*, 515 U.S. at 599 (same, and noting that "the act must have a relationship in time, causation, or logic with the judicial proceedings"). *Aguilar* and *Pettibone* make clear that Section 1503(a)'s reference to obstructing "justice" is what supports a known-pending-proceeding requirement in that statute; neither case suggests that such a requirement is implicit in the phrase "due administration." See Pet. App. 28a n.10.

Section 7212(a), in contrast, refers to the due administration of "this title," *i.e.*, the Internal Revenue Code. 26 U.S.C. 7212(a). As explained (pp. 15-17, *supra*), the IRS duly administers the Code in a variety of ways that do not involve a pending audit, investigation, or other proceeding. Requiring knowledge of administration in only those forms is neither logical nor necessary. Unlike the due administration of justice, the due administration of the tax laws occurs on a regular and predictable schedule that is foreseeable to every taxpayer. And the statute's *mens rea* requirements limit its application to those who are aware of the forthcoming administration of the tax code, intend to obstruct that administration, and specifically intend to obtain an unlawful advantage as a result. See pp. 18-21, *supra*.

2. The history of Section 1503(a) further demonstrates why petitioner's analogy to that statute is unsound. As originally enacted, the statute that became Section 1503(a) provided that:

> Every person who corruptly, or by threats or force, endeavors to influence, intimidate, or impede any witness, or officer *in any court of the United States*, in the discharge of his duty, or corruptly, or by threats or force, obstructs or impedes, or endeavors to obstruct or impede, *the due administration of justice therein*, shall be punished by a fine of not more than five hundred dollars, or by imprisonment not more than three months, or both.

Rev. Stat. § 5399 (1878) (emphases added). The language of that statute thus provided that obstruction was a crime only when it was directed at "the due administration of justice" in a "court of the United States." See *Pettibone*, 148 U.S. at 202, 207 (noting that "the due administration of justice therein" meant "obstruction of the due administration of justice in any court of the United States").

In 1909, Congress amended Rev. Stat. § 5399 to include endeavors to influence or impede grand and petit jurors and witnesses in proceedings before United States commissioners. See Act of Mar. 4, 1909, ch. 321, § 135, 35 Stat. 1113. Congress retained the prohibition on obstructing the "due administration of justice therein" that existed in the earlier statute. *Ibid.*; see *Russell*, 255 U.S. at 140. In 1948, Congress moved that provision to 18 U.S.C. 1503 and made minor wording changes as part of the general recodification of the federal criminal code, including by deleting the word "therein" after "due administration of justice." See Act of June 25, 1948, ch. 645, § 1503, 62 Stat. 769-770. As

petitioner concedes (Br. 26 n.2), that "[m]inor change[] * * * in phraseology" was not intended to alter the meaning of the statute. H.R. Rep. No. 304, 80th Cong., 1st Sess. 107 (1947); see *Scheidler* v. *National Org. for Women, Inc.*, 547 U.S. 9, 20 (2006) (noting that changes to the wording of criminal provisions as part of the 1948 recodification presumptively "worked [no] change in the underlying substantive law") (citation omitted).

As this Court recognized in *Aguilar*, the requirement of a known, pending judicial proceeding that existed under Rev. Stat. § 5399 and *Pettibone* was carried through to Section 1503(a). See *Aguilar*, 515 U.S. at 599 ("[A]s in *Pettibone*, if the defendant lacks knowledge that his actions are likely to affect the judicial proceeding, he lacks the requisite intent to obstruct."). Section 7212(a) has no similar lineage connecting the phrase "due administration of this title" to a pending IRS proceeding. No reason exists to conclude that Congress intended *sub silentio* that the phrase "due administration of this title" in Section 7212(a) would inherently contain the pending-proceeding requirement that Congress had specifically attached to the phrase "due administration *of justice*" in Section 1503(a) and its predecessors.

3. Indeed, had Congress wanted to incorporate a pending-proceeding requirement in Section 7212(a), it had a much better blueprint at hand than Section 1503. Section 1505 of Title 18 makes it a crime to:

> corruptly, or by threats or force, * * * influence[], obstruct[], or impede[] or endeavor[] to influence, obstruct, or impede the due and proper administration of the law under which *any pending proceeding is being had before any department or agency of the United States*.

18 U.S.C. 1505 (emphasis added).[3] Congress enacted that statute for the express purpose of "extend[ing] the protection" afforded to judicial proceedings under the obstruction-of-justice statute to "proceedings before administrative agencies of the Government." H.R. Rep. No. 1143, 76th Cong., 1st Sess. 1 (1939). The fact that Congress "included an express [pending-proceeding] requirement" in Section 1505 "clearly demonstrat[es] that it knows how to impose such a requirement when it wishes to do so." *Whitfield* v. *United States*, 543 U.S. 209, 216 (2005). Its decision not to do so in Section 7212(a), attending instead to obstruction of the "due administration" of the Internal Revenue Code in all its forms, "speaks volumes." *United States* v. *Shabani*, 513 U.S. 10, 14 (1994).

B. Petitioner's Other Statutory Construction Arguments Lack Merit

Petitioner argues (Br. 28-33) that two principles of statutory construction—*noscitur a sociis* ("a word is known by the company it keeps") and the rule against superfluity—further support limiting the phrase "due administration of this title" to pending IRS audits, investigations, and similar proceedings of which the defendant is aware. Neither supports petitioner's atextual reading of the statute.

1. Section 7212(a) "contains two distinct clauses, which each describe a separate offense." *United States* v. *Pansier*, 576 F.3d 726, 734 (7th Cir. 2009). The first

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[3] As originally enacted, the statute referred to "the due and proper administration of the law under which [a] proceeding is being had before [a] department, independent establishment, board, commission, or other agency of the United States." Act of Jan. 13, 1940, ch. 1, § 135(a), 54 Stat. 13.

clause applies to whoever "corruptly or by force or threats of force * * * endeavors to intimidate or impede any officer or employee of the United States acting in an official capacity under this title." 26 U.S.C. 7212(a). The second clause (the omnibus provision at issue here) applies to whoever "in any other way corruptly or by force or threats of force * * * obstructs or impedes, or endeavors to obstruct or impede, the due administration of this title." *Ibid.* Petitioner contends (Br. 29-30) that the first clause requires proof of "direct" interference with known IRS agents engaged in their lawful duties, and thus the principle of *noscitur a sociis* dictates that the omnibus clause should require "direct" interference with IRS audits, investigations, or similar proceedings.

Petitioner's contention is wrong for several reasons. First, the first clause of Section 7212(a) does not forbid interfering with IRS employees only while they are conducting audits, investigations, or other proceedings. The text equally applies while they are gathering information or calculating, assessing, or collecting taxes. Petitioner does not appear to argue otherwise. *E.g.*, Br. 29. Adopting a parallel construction of the first and second clauses (which share the same *mens rea* requirement) would thus reinforce the conclusion that the phrase "due administration of this title" includes not only investigations and other proceedings, but the antecedent stages of the tax code's administration.

Second, petitioner fails to identify any foundation for his apparent belief that a person who hides income, diverts corporate assets to personal accounts, and destroys or disposes of business tax records essential to the reporting, calculation, and assessment of taxes—all with the specific intent to obstruct the IRS's ability to

administer the Internal Revenue Code and to gain an unlawful advantage—has not "directly" obstructed the due administration of the Code. Nor does he identify a textual basis for his evident assumption that doing those things *vis-à-vis* a particular IRS employee would not count as "corruptly * * * imped[ing]" that employee in the discharge of her lawful duties. 26 U.S.C. 7212(a).

Third, and in any event, petitioner's reliance on the principle of *noscitur a sociis* is misplaced. That principle is used only to construe terms that are "of obscure or doubtful meaning," not to change the meaning of unambiguous terms that are simply broad. *Russell Motor Car Co.* v. *United States*, 261 U.S. 514, 520 (1923). Moreover, the principle may only be "invoked when a string of statutory terms raises the implication that the words grouped in a list should be given related meaning." *S. D. Warren Co.* v. *Maine Bd. of Envtl. Prot.*, 547 U.S. 370, 378 (2006) (citation omitted); see *Beecham* v. *United States*, 511 U.S. 368, 371 (1994) ("That several items in a list share an attribute counsels in favor of interpreting the other items as possessing that attribute as well."). The first and second clauses of Section 7212(a) are not items in a list of related terms; rather, they are distinct offenses phrased in the disjunctive. 26 U.S.C. 7212(a). That structure simply does not lend itself to application of *noscitur a sociis*.

In *Ali* v. *Federal Bureau of Prisons*, 552 U.S. 214 (2008), for example, this Court noted that the principles of *noscitur a sociis* and its close relative, *ejusdem generis*, may be useful in interpreting "a list of specific items separated by commas and followed by a general or collective term," or a generic term that is "closely surrounded" by more "specific references." *Id.* at 225-

226. But they have little use, the Court held, in interpreting distinct statutory provisions, particularly those phrased in the "disjunctive, with one specific and one general category." *Id.* at 225; see, *e.g.*, *S. D. Warren Co.*, 547 U.S. at 379 (rejecting argument that, under *noscitur a sociis*, "pairing a broad statutory term with a narrow one shrinks the broad one"); *United States* v. *Gilliland*, 312 U.S. 86, 93 (1941) (concluding that *ejusdem generis* "gives no warrant for narrowing alternative provisions which the legislature has adopted with the purpose of affording added safeguards").[4]

The fact that Section 7212(a) has the same "two-part structure" as Section 1503(a), Pet. Br. 24, does not support petitioner's argument. Rather, it demonstrates the argument's flaw. This Court noted in *Aguilar* that Section 1503(a) identifies specific obstruction offenses against individuals followed by a separate "[o]mnibus" and "catchall" provision that is "far more general in scope than the earlier clauses of the statute." 515 U.S. at 598. Justice Scalia explained in a separate opinion that, because of this structure, "the omnibus clause is *not* a general or collective term following a list of specific items to which a particular statutory command is applicable," but rather is "one of the several distinct and independent prohibitions contained in § 1503," and thus

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[4] The cases petitioner cites (Br. 31-33) in which this Court has applied the principle of *noscitur a sociis* are quite different, and instructive in comparison. See *McDonnell* v. *United States*, 136 S. Ct. 2355, 2369 (2016) (applying *noscitur a sociis* to a list of six nouns within the definition of an "official act"); *Yates* v. *United States*, 135 S. Ct. 1074, 1085 (2015) (plurality opinion) (noting that the term "tangible object" in 18 U.S.C. 1519 "is the last in a list of terms" that otherwise included records and documents).

is not subject to analysis under *ejusdem generis* and related principles. *Id.* at 615 (Scalia, J., concurring in part and dissenting in part); see *Ali*, 552 U.S. at 225 (citing that portion of Justice Scalia's opinion in *Aguilar* as authoritative). The same is true of Section 7212(a).

But even if *noscitur a sociis*, *ejusdem generis*, or related principles applied in this circumstance, they would not yield the result petitioner seeks. The "common attribute" shared by the first and second clauses of Section 7212(a), *Ali*, 552 U.S. at 225, is a prohibition on acts that, with the requisite *mens rea*, interfere with the ability of the IRS and its employees to discharge their official responsibilities to administer the tax code. Neither clause is limited to known, pending IRS audits, investigations, and other such proceedings. The first clause therefore provides no textual basis for importing such a limitation into the second clause.

2. Petitioner further contends (Br. 31) that unless Section 7212(a)'s omnibus clause is limited to the obstruction of known, pending IRS audits, investigations, and similar proceedings, it would render the statute's first clause superfluous. But "the whole value of a generally phrased residual clause * * * is that it serves as a catchall" to ensure that the full range of conduct Congress sought to regulate comes within the statute, including "matters not specifically contemplated" by more specific provisions. *Republic of Iraq* v. *Beaty*, 556 U.S. 848, 860 (2009). And that is plainly what Congress did here: it made it a crime to interfere with particular IRS employees "*or in any other way*" to obstruct or impede the due administration of the tax code. 26 U.S.C. 7212(a) (emphasis added). Congress frequently uses

similar language to identify catchall statutory provisions.[5] "Redundancies across statutes are not unusual events in drafting," *Connecticut Nat'l Bank* v. *Germain*, 503 U.S. 249, 253 (1992), and hardly present the sort of "clear statutory command[s]" necessary to "override ordinary meaning," *Lopez* v. *Gonzales*, 549 U.S. 47, 55 n.6 (2006).

C. The Legislative History Of Section 7212(a) Provides No Support For Petitioner's Reading Of The Statute

Because "the statutory language provides a clear answer," the construction of Section 7212(a) "ends there" and resort to legislative history is unnecessary. *Hughes Aircraft Co.* v. *Jacobson*, 525 U.S. 432, 438 (1999); see *Chamber of Commerce* v. *Whiting*, 563 U.S. 582, 599 (2011) ("Congress's authoritative statement is the statutory text, not the legislative history.") (citation omitted). Regardless, the legislative history of Section 7212(a) provides no support for petitioner's atextual construction of the statute.

Section 7212 was enacted as part of the Internal Revenue Code of 1954. See ch. 736, § 7212, 68A Stat. 855. As courts have repeatedly noted, the accompanying

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[5] See, *e.g.*, 18 U.S.C. 335 (making it a crime to "knowingly issue[], reissue[], or utter[] as money, *or in any other way* knowingly put[] in circulation" bills, notes, and securities on behalf of certain corporations); 16 U.S.C. 973c(b)(5) (making it illegal "to operate a vessel in such a way as to disrupt *or in any other way* adversely affect" local fisheries); 21 U.S.C. 467b(a)(1) (authorizing the government to seize poultry that has been "distributed or offered or received for distribution in violation of this chapter" or that "*in any other way* is in violation of this chapter"); 49 U.S.C. 20109(a) (providing that railroad carriers "may not discharge, demote, suspend, reprimand, *or in any other way* discriminate against" certain whistleblowers) (all emphases added).

House and Senate reports contain no substantive discussion of the statute's omnibus clause. See, *e.g.*, *Mitchell*, 985 F.2d at 1279 ("We do not find the history particularly enlightening or dispositive as to Congress's understanding of the precise scope of the omnibus provision."); *United States* v. *Williams*, 644 F.2d 696, 699 n.13 (8th Cir.) (noting that the "scant legislative history" for Section 7212 is "silent on [the] omnibus clause" and thus "virtually useless" in interpreting that provision), cert. denied, 454 U.S. 841 (1981).

Instead, the reports focus on the first clause of Section 7212(a). See H.R. Rep. No. 1337, 83d Cong., 2d Sess. 108 (1954) (House Report); S. Rep. No. 1622, 83d Cong., 2d Sess. 147 (1954) (Senate Report). The statute's omnibus clause is mentioned in passing only twice in each of the reports, both times to clarify that acts of force or threats coming within the first clause would also come within the second clause. See House Report 108 (noting "cases where the officer is intimidated or injured; that is, where corruptly, by force or threat of force, directly or by communication, an attempt is made to impede the administration of the internal-revenue laws"); *id.* at A426 (referring to attempts "by force or threat of force * * * to obstruct or impede the due administration of this title"); Senate Report 147, 604 (same).

The reports' focus on force and threats against IRS employees is unsurprising, given that prior law was limited to assaults against revenue agents and the scope of protection against threats was the subject of debate. See House Report A426-A427; Senate Report 148, 604. Nothing in the legislative history, however, purports to interpret the omnibus clause or "limit th[e] broad language" of that provision—much less limit it to pending

IRS audits, investigations, and other proceedings (which are not mentioned *anywhere* in the legislative history). *United States* v. *Martin*, 747 F.2d 1404, 1409 (11th Cir. 1984). "Congress was not required to list in the legislative history every conceivable corrupt endeavor to avoid waiving the statute's application to one type of corrupt endeavor." *Ibid.*; see *Morales* v. *Trans World Airlines, Inc.*, 504 U.S. 374, 385 n.2 (1992) ("[L]egislative history need not confirm the details of changes in the law effected by statutory language before we will interpret that language according to its natural meaning."). The "inconclusive statutory history" of Section 7212(a) provides no "basis for refusing to give effect to [the statute's] plain language." *Hubbard* v. *United States*, 514 U.S. 695, 708 (1995).

D. The Rule Of Lenity Does Not Apply

Petitioner argues (Br. 56-58) that, if all else fails, this Court should adopt his interpretation of Section 7212(a) under the rule of lenity. That rule "applies only when a criminal statute contains a grievous ambiguity or uncertainty, and only if, after seizing everything from which aid can be derived, the Court can make no more than a guess as to what Congress intended." *Ocasio* v. *United States*, 136 S. Ct. 1423, 1434 n.8 (2016) (citation omitted); see *Moskal* v. *United States*, 498 U.S. 103, 108 (1990) (noting that the Court has "declined to deem a statute 'ambiguous' for purposes of lenity merely because it was *possible* to articulate a construction more narrow than that urged by the Government"). As explained, petitioner's reading of Section 7212(a) is inconsistent with the ordinary meaning of the statutory text, and nothing in the statute's structure or history overcomes that meaning. The rule of lenity does not apply.

III. PETITIONER'S POLICY ARGUMENTS DO NOT SUPPORT HIS INTERPRETATION OF SECTION 7212(a)

Petitioner contends (Br. 40-56) that the government's interpretation of Section 7212(a) is too expansive; that it overlaps with other criminal offenses the government should charge instead; and that it could chill "legitimate tax minimization activity." None of those assertions is a reason to adopt petitioner's atextual reading of the statute. See *Lewis* v. *City of Chicago*, 560 U.S. 205, 217 (2010) ("[I]t is not our task to assess the consequences of each approach and adopt the one that produces the least mischief. Our charge is to give effect to the law Congress enacted."). Regardless, petitioner's claims lack merit.

A. Section 7212(a) Does Not Impermissibly Overlap With Other Criminal Statutes

Petitioner asserts (Br. 40-52) that giving Section 7212(a)'s omnibus clause its ordinary meaning would upset the balance of the Internal Revenue Code's criminal provisions by creating too much overlap with other misdemeanor and felony offenses. This Court has consistently explained, however, that overlap in the scope or even the precise elements of criminal statutes is commonplace, especially in the tax code, and does not warrant limiting the scope of Congress's enactments or forcing the government to prosecute only the less serious offense. Petitioner's arguments to the contrary are especially misplaced in the context of Section 7212(a), which has different elements than other tax offenses.

1. This Court has long recognized that overlap, even "substantial" overlap, "is not uncommon in criminal statutes." *Loughrin* v. *United States*, 134 S. Ct. 2384, 2390 n.4 (2014). "[W]hen an act violates more than one

criminal statute, the Government may prosecute under either so long as it does not discriminate against any class of defendants." *United States* v. *Batchelder*, 442 U.S. 114, 123-124 (1979); see, *e.g.*, *Rosenberg* v. *United States*, 346 U.S. 273, 294 (1953) (Clark, J., concurring, joined by five members of the Court) ("Where Congress by more than one statute proscribes a private course of conduct, the Government may choose to invoke either applicable law."); *United States* v. *Beacon Brass Co.*, 344 U.S. 43, 45-46 (1952). That principle applies whether the overlap involves "two statutes with different elements" or "two statutes with identical elements." *Batchelder*, 442 U.S. at 125. The fact that statutes have different maximum penalties is generally irrelevant, *id.* at 124-125, as is the classification of those offenses as felonies or misdemeanors, see, *e.g.*, *Bishop*, 412 U.S. at 361; *Sansone*, 380 U.S. at 352; *Berra* v. *United States*, 351 U.S. 131, 134 (1956).

The tax code's criminal provisions provide an "obvious" example of such overlap. *Sansone*, 380 U.S. at 349. This Court has repeatedly considered, and rejected, claims that criminal tax statutes are improperly duplicative, including claims that conduct charged as a felony should instead have been charged as a misdemeanor. In *Spies*, for example, this Court held that a jury could properly convict the defendant of felony tax evasion if it found that his conduct, which included willfully failing to file a return and pay a tax (both misdemeanors), also showed an "affirmative willful attempt" to evade tax liability. 317 U.S. at 499-500. The Court expressed skepticism that Congress would intend to criminalize "*no more than* the same derelictions" in a felony provision than in a misdemeanor provision, *id.* at 497 (emphasis added), but held that the additional requirement of an

affirmative attempt in the felony provision resolved any concern—even though the same facts could be used to prove both offenses. *Id.* at 498-499.

This Court has repeatedly reaffirmed the principle that overlap between the tax code's misdemeanor and felony provisions—even *exact* overlap on the facts of a case—presents no impediment to a felony conviction. In *Sansone*, for example, the Court held that the government was permitted to charge felony tax evasion under 26 U.S.C. 7201 based solely on facts that "covered precisely the same ground" as two misdemeanor provisions (failure to pay a tax under 26 U.S.C. 7203 and filing a false document under 26 U.S.C. 7207). 380 U.S. at 352-353 (quoting *Berra*, 351 U.S. at 134). In *Bishop*, the Court extended that holding to a felony conviction under 26 U.S.C. 7206(1) (filing a false tax return) that was based on conduct also covered by Section 7207. See 412 U.S. at 361 (affirming felony conviction even though, on the facts of the case, "a conviction of the misdemeanor would clearly support a conviction for the felony," and rejecting request for a lesser-included-offense instruction); see also, *e.g.*, *Berra*, 351 U.S. at 134-135 (affirming conviction for felony tax evasion based on facts that "were identical with those required to prove" a misdemeanor and rejecting lesser-included-offense instruction on the misdemeanor); *United States* v. *Noveck*, 273 U.S. 202, 207 (1927) (noting that factual overlap between felony and misdemeanor provisions in the tax code is "no obstacle" to enforcing both).[6]

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[6] In the Tax Reform Act of 1984, Pub. L. No. 98-369, Div. A, § 159(a), 98 Stat. 696, Congress overturned a lower court's determination that conduct violating one of the tax code's misdemeanor provisions could not also be prosecuted as a felony. See H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 1001 (1984) (noting that a provision of

The same principle applies to comparisons between two felony provisions. In *Beacon Brass Co.*, this Court affirmed the defendant's conviction for tax evasion based on false statements made to the Treasury Department, even though those statements could also have been prosecuted under another statute prohibiting false statements made to government agencies. 344 U.S. at 46. The Court found no support for the notion that the existence of a statute "specifically outlawing * * * false statements" meant that tax evasion committed by means of a false statement could not be punished under the tax code. *Ibid.* And in *Batchelder*, when confronted with two statutes prohibiting the same offense of possession of a firearm by a convicted felon (one of which allowed a higher possible term of imprisonment), the Court held that the government was free to pick which one it wanted to enforce. 442 U.S. at 123-125.

2. These principles demonstrate why petitioner's complaints about potential overlap between the government's interpretation of Section 7212(a) and other tax offenses are misplaced.

a. Consider first the tax code's misdemeanor provisions. Each of the offenses petitioner cites makes it a crime to "willfully" do (or fail to do) certain things in violation of the tax laws. See 26 U.S.C. 7203 (willful failure to pay tax, file a return, keep records, or supply information), 7205 (willfully providing false information, or failing to provide information, to employer), 7207 (willfully making a material false statement). The willfulness element in each of those statutes requires the

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the Act was intended to overrule an Eighth Circuit decision that prevented "prosecution for willful evasion [26 U.S.C. 7201] * * * where prosecution for a false certificate [26 U.S.C. 7205] [was] also possible").

government to prove that the defendant was aware that her conduct was illegal under the tax laws. See, *e.g.*, *Cheek*, 498 U.S. at 201; *Bishop*, 412 U.S. at 356, 360.

Those provisions may be violated in a variety of circumstances that would not be felonies under Section 7212(a). A defendant may, for example, fail to provide information, keep records, or pay her taxes due to "[w]illful but passive neglect." *Spies*, 317 U.S. at 499. She may make false statements out of "embarrassment, fear, or a desire for privacy," despite knowing that her actions are unlawful. *Kungys* v. *United States*, 485 U.S. 759, 780 (1988) (citation omitted). Or she may simply be a "disgruntled taxpayer" seeking to "annoy" the IRS "with no intent to gain any advantage or benefit other than the satisfaction" of causing annoyance. *Reeves*, 752 F.2d at 999; see *id.* at 1002 (Gee, J., concurring) (noting that some willful violations of the tax code "arise from simple contrariness"). Each of those circumstances would be punishable as misdemeanors, but none necessarily involves a corrupt endeavor to intentionally obstruct the IRS's ability to administer the tax code with the specific intent to gain an unlawful advantage, which would be necessary to prove felony obstruction.

Petitioner makes three principal arguments in response, none of which is persuasive. First, he contends (Br. 43-47, 52-53) that the *mens rea* requirement of Section 7212(a) will be satisfied in "almost" all cases that could be prosecuted as misdemeanors. The examples cited above show that he is wrong about that. But even if he were right, the fact that two statutes may commonly be applied to the same recurring set of facts is not a license to ignore their separate elements. See, *e.g.*, *Bishop*, 412 U.S. at 357-358 (rejecting argument that the presence of perjury declarations in all federal

tax returns "effectively equalize[d]" the felony perjury statute and the misdemeanor false statement statute); cf. *United States* v. *Wells*, 519 U.S. 482, 491 n.9 (1997) (in determining whether false statements must be material under 18 U.S.C. 1014, "[t]he question is not whether the specified categories of statements will almost certainly be material statements in point of fact," but rather "whether materiality must be proven as a separate element"). And regardless, this Court has explained that even "two statutes with *identical* elements" create no impermissible overlap. *Batchelder*, 442 U.S. at 125 (emphasis added).

Second, petitioner notes (Br. 43-44) that the requirement of intent to obtain an unlawful advantage need not involve a particular *financial* advantage under the tax laws. That observation, though true, does not mean that any advantage will suffice. The "advantage" required by Section 7212(a) must be illegal and must arise directly from the defendant's obstructive acts. Unlawfully reducing or eliminating one's tax liability is an obvious example. See *Reeves*, 752 F.2d at 998. Others may include filing fraudulent tax returns to intimidate judges and other public officials, see *United States* v. *Saldana*, 427 F.3d 298, 301-302 (5th Cir.), cert. denied, 546 U.S. 1067 (2005), and 546 U.S. 1122 (2006); and concealing the fact that reported income is actually laundered drug proceeds, see *Popkin*, 943 F.2d at 1536-1537. Maintaining one's privacy, avoiding the tedium of filling out tax forms, or feeling good about having annoyed the IRS does not suffice. See, *e.g.*, *Spies*, 317 U.S. at 499; *Reeves*, 752 F.2d at 999.

Third, petitioner argues (Br. 44-45) that enforcing Section 7212(a) in circumstances where a misdemeanor

charge might also be brought gives the government unfair leverage over the defendant's punishment. This Court has repeatedly rejected that assertion. "The lack of minimum penalties" in the tax code's criminal provisions "denies to the prosecutor an unbridled discretion as to the penalty to be imposed upon particular defendants by deciding whether, on the same facts, to charge a felony or a misdemeanor." *Sansone*, 380 U.S. at 350 n.6. Although a prosecutor may appropriately take "the penalties available upon conviction" into account when making charging decisions, that choice merely affects the range the court will ultimately consider when exercising its sentencing discretion. *Batchelder*, 442 U.S. at 125; see *ibid.* ("Just as a defendant has no constitutional right to elect which of two applicable federal statutes shall be the basis of his indictment and prosecution, neither is he entitled to choose the penalty scheme under which he will be sentenced.").

b. Petitioner's assertion (Br. 49-51) that the government's interpretation of Section 7212(a) will impermissibly overlap with, or permit the government to circumvent the requirements of, other felony provisions fails for the same reasons. Petitioner focuses on two crimes—tax evasion under 26 U.S.C. 7201 and filing a false tax return under 26 U.S.C. 7206(1)—but neither supports his argument. Section 7201 allows a higher maximum punishment (five years of imprisonment) than Section 7212(a) and requires proof of different elements, including the "existence of a tax deficiency" and a willful effort to evade that deficiency. *Sansone*, 380 U.S. at 351. Section 7206(1), which carries the same maximum punishment as Section 7212(a), also requires proof of different elements. See 26 U.S.C. 7206(1) (requiring the defendant to willfully make and subscribe a

return or other document "under the penalties of perjury" that he knows contains a material false statement).[7]

Petitioner's efforts to portray the criminal provisions of the tax code as neat, hermetically sealed statutes—and his colorful allusions to Section 7212(a) as an "all-purpose tax crime" (Br. 3, 52) and a "back-pocket secret weapon" (Br. 49)—collapse in the face of reality. Criminal tax provisions have much in common with each other and with other criminal statutes, reflecting Congress's desire to provide comprehensive and overlapping protections against those who seek to evade their duties under our self-reporting system of taxation and to obstruct the IRS in the discharge of its responsibilities to administer the tax code. Section 7212(a) is a specific and limited provision that serves an important role alongside other criminal statutes in specifically protecting the processes the IRS uses to administer the tax laws.

B. Section 7212(a) Does Not Impermissibly "Chill" Lawful Conduct

Petitioner (Br. 54-55) and several of his supporting *amici* contend that a straightforward reading of Section 7212(a) will impermissibly "chill" lawful conduct. That assertion is unfounded.

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[7] Petitioner also briefly mentions (Br. 47) 26 U.S.C. 7212(b), which makes it a felony to "forcibly rescue[]" property seized by the IRS. That statute complements Section 7212(a) by providing for a reduced sentence (up to two years of imprisonment) if the government proves that the defendant knew property was seized by the IRS and sought to recover it by force, without the need to prove obstructive intent. See *United States* v. *Hardaway*, 731 F.2d 1138, 1140 (5th Cir.), cert. denied, 469 U.S. 865 (1984).

Petitioner notes (Br. 5, 39), for example, that obstructive acts may consist of "otherwise lawful conduct." But most obstruction statutes (and many other criminal statutes) reach conduct that would be innocent but for a culpable mental state. Shredding documents or deleting computer files is not inherently wrongful conduct, but it *becomes* wrongful if done with the requisite criminal intent. See *Yates* v. *United States*, 135 S. Ct. 1074, 1085-1086 (2015) (plurality opinion) (citing 18 U.S.C. 1519). The same is true of persuading a person not to go to court, *Arthur Andersen*, 544 U.S. at 703-704, or a public official's expressions of support for a course of action, *McDonnell* v. *United States*, 136 S. Ct. 2355, 2371 (2016). Culpable *mens rea* requirements, reinforced by "the constitutional safeguard of proof beyond a reasonable doubt," *In re Winship*, 397 U.S. 358, 368 (1970), amply distinguish the person who innocently shreds documents while cleaning out her office from the criminal who does so as part of a corrupt endeavor to obstruct the IRS's ability to ascertain her income and calculate, assess, and collect any taxes she may owe.

Similarly, the government's interpretation of Section 7212(a) will not impermissibly chill "legitimate tax minimization activity." Pet. Br. 54. "Taxpayers are * * * generally free to structure their business affairs as they consider to be in their best interests, including lawful structuring * * * to minimize taxes." *Commissioner* v. *First Sec. Bank of Utah*, 405 U.S. 394, 398 n.4 (1972). Neither petitioner nor any of his supporting *amici* identify a single example of a lawful tax-minimization strategy that has actually been placed at risk by the federal courts' widespread adoption of the interpretation of Section 7212(a) that the government advocates here. See p. 9, *supra* (citing cases). To the extent they fear

scrutiny of tax-avoidance schemes that operate in a gray area of dubious legality, that possibility already exists under many criminal tax provisions, not just Section 7212(a). The heightened *mens rea* requirements of Section 7212(a) and other tax offenses protect taxpayers and their advisors who make reasonable but mistaken judgments about what the tax code allows. See *Cheek*, 498 U.S. at 199-200; *Bishop*, 412 U.S. at 360-361. No reason exists to further limit the scope of Section 7212(a).

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

1. 18 U.S.C. 1503 provides:

Influencing or injuring officer or juror generally

(a) Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, magistrate judge, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be punished as provided in subsection (b). If the offense under this section occurs in connection with a trial of a criminal case, and the act in violation of this section involves the threat of physical force or physical force, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

(b) The punishment for an offense under this section is—

(1) in the case of a killing, the punishment provided in sections 1111 and 1112;

(2) in the case of an attempted killing, or a case in which the offense was committed against a petit juror and in which a class A or B felony was charged, imprisonment for not more than 20 years, a fine under this title, or both; and

(3) in any other case, imprisonment for not more than 10 years, a fine under this title, or both.

2. 18 U.S.C. 1505 provides in pertinent part:

Obstruction of proceedings before departments, agencies, and committees

* * * * *

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—

Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.

3. 18 U.S.C. 1515(b) provides:

Definitions for certain provisions; general provision

(b) As used in section 1505, the term "corruptly" means acting with an improper purpose, personally or by influencing another, including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information.

4. 26 U.S.C. 7212 provides:

Attempts to interfere with administration of internal revenue laws

(a) Corrupt or forcible interference

Whoever corruptly or by force or threats of force (including any threatening letter or communication) endeavors to intimidate or impede any officer or employee of the United States acting in an official capacity under this title, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or endeavors to obstruct or impede, the due administration of this title, shall, upon conviction thereof, be fined not more than $5,000, or imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person convicted thereof shall be fined not more than $3,000, or imprisoned not more than 1 year, or both. The term "threats of force", as used in this subsection, means threats of bodily harm to the officer or employee of the United States or to a member of his family.

(b) Forcible rescue of seized property

Any person who forcibly rescues or causes to be rescued any property after it shall have been seized under this title, or shall attempt or endeavor so to do, shall, excepting in cases otherwise provided for, for every such offense, be fined not more than $500, or not more than double the value of the property so rescued, whichever is the greater, or be imprisoned not more than 2 years.